

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

07-21299

JUAN TAMAYO and
MIAMI HERALD MEDIA CO.,
publisher of *The Miami Herald*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF JUSTICE and
UNITED STATES DEPARTMENT
OF THE NAVY,

Defendants.

MAGISTRATE JUDGE
TURNOFF

COMPLAINT

Plaintiffs, Juan Tamayo and Miami Herald Media Co., publisher of *The Miami Herald*, (collectively, "*The Herald*"), sue the United States Department of Justice ("DOJ") and the United States Department of the Navy (the "Navy") (collectively, the "Departments") and state:

1. This action is brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552, as amended ("FOIA"), to compel the disclosure of records concerning a former government official convicted of criminal conduct.

2. Plaintiff Juan Tamayo is a professional journalist for *The Herald* who routinely relies upon federal records as a principal source for newsgathering. Plaintiff Miami Herald Media Co., a division of The McClatchy Company, publishes *The Herald*, a newspaper of general circulation in Miami-Dade County, Florida.

Reporters for *The Herald* routinely rely upon federal records as a principal source for newsgathering.

3. Defendant Departments are within the executive branch of the United States Government. Both are agencies of the United States within the meaning of 5 U.S.C. § 552(f)(1). The Departments have possession and control of the records requested by *The Herald*.

4. This Court has subject matter jurisdiction of this action and personal jurisdiction over the Departments pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

5. Juan Tamayo resides within the Southern District of Florida, and Miami Herald Media Co.'s principal place of business is within the Southern District of Florida.

6. Alberto Coll ("Coll") is a former deputy secretary of defense and former chairman of the Naval War College's strategic research department.

7. On February 14, 2005, Coll pled guilty to an Information charging him with knowingly and willfully making materially false, fictitious and fraudulent statements and representations to representatives of the Department of State and the Department of Defense, in violation of 18 U.S.C. § 1001.

8. On June 14, 2005, Coll was convicted of the charges contained in the Information. Coll was sentenced to one year of probation and was fined \$5,100.

9. On July 11, 2005, *The Herald* served a request for public records on the DOJ, requesting a copy of an admission of criminal conduct which Coll signed in

late 2003 or early 2004 at a Navy facility in Newport, Rhode Island; any other document or admission signed by Coll related to the criminal case; paperwork Coll completed on or about December 12, 2003 in which he made statements which were a basis for the charges contained in the Information; and any other signed statements, electronic surveillance logs, electronic intercepts, and audio and video data related to the criminal investigation of Coll. A copy of the request is attached as Exhibit A.

10. On August 12, 2005, the DOJ rejected *The Herald's* request. The DOJ stated that *The Herald* had not provided a public justification for release and that records pertaining to a third party generally cannot be released absent, *inter alia*, a "clear demonstration that the public interest in disclosure outweighs the personal privacy interest and that significant public benefit would result from disclosure" The DOJ asserted that release of the requested records would result in an unwarranted invasion of Coll's personal privacy in violation of the Privacy Act. It also claimed that FOIA exemptions 6 and 7 precluded the release of the records sought. A copy of the response is attached as Exhibit B.

11. On or about September 29, 2005, *The Herald* resubmitted its request, providing a public justification for release.

12. On or about October 1, 2005, *The Herald* also appealed the DOJ's determination. A copy of the appeal is attached as Exhibit C.

13. On September 20, 2006, the DOJ affirmed its earlier refusal to disclose the requested records. It stated without elaboration that there was no overriding

public interest and that even confirming the existence of records about an individual could reasonably be expected to constitute an unwarranted invasion of personal privacy pursuant to FOIA exception 7. A copy of the denial of the appeal is attached as Exhibit D.

14. On July 11, 2005, *The Herald* served a request for public records on the Department of Defense ("DOD"), requesting a copy of an admission of criminal conduct which Coll signed in late 2003 or early 2004 at a Navy facility in Newport, Rhode Island; any other document or admission signed by Coll related to the criminal case; paperwork Coll completed on or about December 12, 2003 in which he made statements which were a basis for the charges contained in the Information; and any other signed statements, electronic surveillance logs, electronic intercepts, and audio and video data related to the criminal investigation of Coll. A copy of the request is attached as Exhibit E.

15. On August 2, 2005, the DOD replied that it had received *The Herald's* request and referred it to the Navy. A copy of the letter is attached as Exhibit "F".

16. On June 16, 2006, the Navy rejected *The Herald's* request. The Navy asserted that release of the requested records would result in an unwarranted invasion of Coll's personal privacy and claimed that FOIA exemptions 6 and 7 precluded the release of the records sought. A copy of the response is attached as Exhibit G.

17. On or about July 11, 2006, *The Herald* appealed the Navy's determination. A copy of the appeal is attached as Exhibit H.

18. On September 22, 2006, the Navy affirmed its earlier refusal to disclose the requested records. It stated without elaboration that releasing the information *The Herald* seeks would constitute a "clearly unwarranted invasion of privacy" pursuant to FOIA exemptions 6 and 7. A copy of the denial of the appeal is attached as Exhibit I.

19. The DOJ and the Navy have failed to comply with the provisions of FOIA, specifically 5 U.S.C. § 552(a)(3). *The Herald* has exhausted its administrative remedies with respect to its requests, as it has received final denials of its appeals from both the DOJ and the Navy.

20. Because of the Departments' refusal to make the requested records available, *The Herald* has retained the undersigned attorneys in order to pursue its rights and has agreed to pay its attorneys' reasonable fees.

COUNT I
DOJ

(Violation of FOIA)

21. This is an action pursuant to 5 U.S.C. § 552.

22. *The Herald* adopts the allegations set forth in paragraphs 1 through 13, 19, and 20.

23. *The Herald* requested government records from the DOJ pursuant to FOIA, to which it has a statutory right under 5 U.S.C. § 552(a)(3).

24. The DOJ has refused to provide records responsive to *The Herald's* request.

25. FOIA exemption 7, the basis the DOJ asserts for its denial, does not exempt the requested records from release.

26. The DOJ's refusal to provide the requested records violates 5 U.S.C. § 552(a)(3)(A).

WHEREFORE, *The Herald* respectfully requests that this Court order the DOJ to produce the requested records to *The Herald*; award *The Herald* its costs and reasonable attorneys' fees in this action, as provided by 5 U.S.C. § 552(a)(4)(E); and grant such other and further relief as this Court may deem just and proper.

COUNT II

The Navy

(Violation of FOIA)

27. This is an action pursuant to 5 U.S.C. § 552.

28. *The Herald* adopts the allegations set forth in paragraphs 1 through 8 and 14 through 20.

29. *The Herald* requested government records from the Navy pursuant to FOIA, to which it has a statutory right under 5 U.S.C. § 552(a)(3).

30. The Navy has refused to provide records responsive to *The Herald's* request.

31. FOIA exemptions 6 and 7, the bases the Navy asserts for its denial, do not exempt the requested records from release.

32. The Navy's refusal to provide the requested records violates 5 U.S.C. § 552(a)(3)(A).

WHEREFORE, *The Herald* respectfully requests that this Court order the Navy to produce the requested records to *The Herald*; award *The Herald* its costs and reasonable attorneys' fees in this action, as provided by 5 U.S.C. § 552(a)(4)(E); and grant such other and further relief as this Court may deem just and proper.

Dated: May 18, 2007.

Respectfully submitted,

HOLLAND & KNIGHT LLP
Attorneys for *The Herald*
701 Brickell Avenue
Suite 3000
Miami, Florida 33131
Telephone: (305) 374-8500
Facsimile: (305) 789-7799


By: 
Sanford L. Bohrer
Florida Bar No. 160643
sbohrer@hklaw.com
Scott D. Ponce
Florida Bar No. 169528
sponce@hklaw.com
Robert T. Watson
Florida Bar No. 679429
robert.watson@hklaw.com

Exhibit "A"

The Miami Herald

www.herald.com

One Herald Plaza
Miami, FL 33132-1693
Tel (305) 350-2111

To: Executive Office for U.S. Attorney
FOIA and Privacy Staff
600 E Street, N.W., Room 7300
Washington, D. C. 20530-0001

From: Juan O. Tamayo, reporter, Miami Herald
1 Herald Plaza
Miami, FL 33132

Date: July 11, 2005

This is a request under the Freedom of Information Act (US Code 552) for a copy of the following records:

1. An admission of criminal conduct signed by Alberto Coll, the chairman of the strategic research department at the U.S. Naval War College, in Newport, R.I. in the presence of officials from the U.S. Attorney's office in Rhode Island, FBI agents from the Boston office and Navy NCIS officials. This took place at a Navy facility in Newport, R.I. in late 2003 or early 2004. Mr. Coll signed a plea agreement on Feb. 4, 2005 and was sentenced on June 7, 2005 to a one-year probation and \$5,000 fine on charges of lying about a January 2004 trip to Cuba.
2. Any other signed statements, electronic surveillance logs, electronic intercepts and all audio, video data or any other intercepts gathered as a result of the investigation of Mr. Coll, including paperwork he filled out on or about Dec. 12, 2003 in which he "knowingly and willfully" made "materially false, fictitious and fraudulent statements" about his January 2004 trip to Cuba, claiming to visit a sick aunt.
3. Any other document signed by Mr. Coll as a result of this case and not already contained in the court file, including any admission that he knowingly met with Cuban intelligence officials.

According to his biography, Mr. Coll was born in Havana, Cuba on June 15, 1955 and arrived in the United States in 1969. In 1990, President George H.W. Bush appointed Coll to serve as deputy assistant secretary of defense for special operations and low-intensity conflicts .

I am requesting media fee waiver, fast track and expedited treatment because this subject is a matter of exigency to the public and newsworthiness. This statement of compelling need is true and correct to the best of my knowledge and belief.

Please telephone me at (305) 205-6263 if I can clarify or expedite this request in any way.

The Act requires the fullest possible access to public records. Denial of any part of this request should be accompanied by a written statement of exactly what is being denied and the specific reason, subject to judicial review.

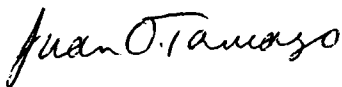
The law also requires that if part of a record is exempt from disclosure, you must redact and release all segregable parts.

You can mail the requested copies of records to:

Juan O. Tamayo
Miami Herald
1 Herald Plaza
Miami, FL 33132

Thank you for your assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Juan O. Tamayo".

Juan O. Tamayo
jtamayo@herald.com

Exhibit "B"



U.S. Department of Justice

Executive Office for United States Attorneys
Freedom of Information/Privacy Act Unit
600 E Street, N.W., Room 7300
Washington, D.C. 20530
202-616-6757 Fax 202-616-6478

AUG 12 2005

Request Number: 05-2162Requester: Juan O. TamayoSubject of Request: Alberto Coll

Dear Requester:

The Executive Office for United States Attorneys has received your Freedom of Information Act request and assigned the above number to the request.

You have requested records concerning a third party (or third parties). Records pertaining to a third party generally cannot be released absent express authorization and consent of the third party, proof that the subject of your request is deceased, or a clear demonstration that the public interest in disclosure outweighs the personal privacy interest and that significant public benefit would result from the disclosure of the requested records. Since you have not furnished a release, death certificate, or public justification for release, the release of records concerning a third party would result in an unwarranted invasion of personal privacy and would be in violation of the Privacy Act, 5 U.S.C. §552a. These records are also generally exempt from disclosure pursuant to sections (b)(6) and (b)(7)(C) of the Freedom of Information Act, 5 U.S.C. §552.

We have not performed a search for records and you must not assume that records concerning the third party exist. We will release, if requested, any public records maintained in our files, such as court records and news clippings, without the express authorization of the third party, a death certificate, or public justification for release. If you desire to obtain public records, if public records exist in our files, please submit a new request for public documents.

Should you obtain the written authorization and consent of the third party for release of the records please submit a new request for the documents accompanied by the written authorization. A form is enclosed to assist you in providing us the authorization and consent of the subject of your request. The authorization must be notarized or signed under penalty of perjury pursuant to 18 U.S.C. §1001. **Please send your new request to the address above.**

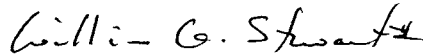
This is a final determination and your request for information will be closed. You may appeal my decision in this matter by writing within 60 days from the date of this letter, to:

Office of Information and Privacy
United States Department of Justice
Flag Building, Suite 570
Washington, D.C. 20530

Both the envelope and the letter of appeal must be clearly marked "Freedom of Information Act/Privacy Act Appeal."

After the appeal has been decided, you may have judicial review by filing a complaint in the United States District Court for the judicial district in which you reside or have your principal place of business; the judicial district in which the requested records, if any, are located; or in the District of Columbia.

Sincerely,



/s/ Marie A. O'Rourke
Assistant Director

Enclosure

(Page 2 of 2)

Form No. 006 - 6/02

Exhibit "C"

The Miami Herald

A Knight-Ridder Newspaper

One Herald Plaza, Miami, Florida 33132-1693 (305) 350-2111

FREEDOM OF INFORMATION ACT/PRIVACY ACT APPEAL

Office of Information and Privacy
U.S. Department of Justice
Flag Building Suite 570
Washington D.C. 20530

Oct 1
~~Aug 15~~ / 05

Dear Sirs:

This is to appeal the rejection of my request, No. 05-2162, notified to me via letter dated Aug. 12 2005. I believe that in this case the public interest in government actions far outweigh the privacy concerns involved. Further, significant public benefit would result from the disclosure of the requested records.

First, Mr. Alberto Coll now has very little practical privacy left as a result of his previous jobs and conviction in a criminal case.

He was a public official for for several years as Deputy Secretary of Defense, hen became one of the top professors at the U.S. Naval War College. For years he has remained a well known public commentator on the issues of Cuba and a Google search of his name produced 153,000 hits.

Also totally public was his guilty plea this June on charges of lying to the government about a trip to Cuba, his conviction and his sentence. His case has been the subject of at least 12 news stories and columns this year alone, from the Providence Journal to the Associated Press and the Miami Herald.

And there is an overriding public interest in obtaining the full details of the criminal case because they go to the heart of government activitiy in this case.

We believe that these documents show that Mr. Coll confessed to having carried out several improper activities not mentioned in the public record of his case so far – including his meetings with Cuban officials who he could reasonably suspect of having ties to the Cuban intelligence services. A a holder of a security clearance, he should have reported those contacts to the appropiate authorities.

We believe that despite the seriousness of these issues – Cuba remains on the U.S. State Department list of nations that support or abet international terrorism -- officials of the U.S. Navy and the U.S. Naval War College are intent on keeping the full details of Mr. Coll's activity out of the public eye because a detailed accounting would show some of those very same Navy officials to have been derelict in dealing with Mr. Coll's infractions. They reacted with embarrassingly little alarm when first informed that Mr. Coll was carrying out activities that could compromise his security clearance. We believe that at least one senior official at the Navy War College has been transferred out of his job as a result of his failure to take the Coll case more seriously.

Further, significant public benefit would result from the disclosure of the requested records because the public always benefits from the full truth of any event, especially when it involves the actions of government officials or its employees.

The privacy rights of a senior government man who has been convicted of a felony – and is alleged to have had contacts with officials of a Communist-ruled nation long hostile to U.S. interests – cannot and do not outweigh the public's right to know.

Accordingly, I request that you approve Request No. 05-2162.

Juan O. Tamayo
Miami Herald
1 Herald Plaza
Miami Fla. 33132

Office 305 376 3579
Cell 305 205 6263

Exhibit "D"



U.S. Department of Justice

Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

SEP 20 2006

Mr. Juan O. Tamayo
The Miami Herald
1 Herald Plaza
Miami, FL 33132-1693

Re: Appeal No. 06-0101
Request No. 05-2162
BVE:GLB:DJS

Dear Mr. Tamayo:

You appealed from the action of the Executive Office for United States Attorneys (EOUSA) on your request for access to various records pertaining to Alberto Coll.

After carefully considering your appeal, I am affirming EOUSA's action in refusing to confirm or deny the existence of records responsive to your request. Without the consent of an individual, proof of their death, official acknowledgment of an investigation, or an overriding public interest, confirming or denying the existence of law enforcement records about an individual could reasonably be expected to constitute an unwarranted invasion of their personal privacy. See 5 U.S.C. § 552(b)(7)(C).

If you are dissatisfied with my action on your appeal, you may seek judicial review in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Metcalfe", written over a large, loopy flourish.

Daniel J. Metcalfe
Director

Exhibit "E"

The Miami Herald

www.herald.com

To: Department of Defense
Director, Freedom of Information & Security Review
1155 Defense Pentagon, Room 2C757
Washington DC 20301-1155

From: Juan O. Tamayo, reporter, Miami Herald
1 Herald Plaza
Miami, FL 33132

Date: July 11, 2005

This is a request under the Freedom of Information Act (US Code 552) for a copy of the following records:

1. An admission of criminal conduct signed by Alberto Coll, the chairman of the strategic research department at the U.S. Naval War College, in Newport, R.I. in the presence of officials from the U.S. Attorney's office in Rhode Island, FBI agents from the Boston office and Navy NCIS officials. This took place at a Navy facility in Newport, R.I. in late 2003 or early 2004. Mr. Coll signed a plea agreement on Feb. 4, 2005 and was sentenced on June 7, 2005 to a one-year probation and \$5,000 fine on charges of lying about a January 2004 trip to Cuba.
2. Any other signed statements, electronic surveillance logs, electronic intercepts and all audio, video data or any other intercepts gathered as a result of the investigation of Mr. Coll, including paperwork he filled out on or about Dec. 12, 2003 in which he "knowingly and willfully" made "materially false, fictitious and fraudulent statements" about his January 2004 trip to Cuba, claiming to visit a sick aunt.
3. Any other document signed by Mr. Coll as a result of this case and not already contained in the court file, including any admission that he knowingly met with Cuban intelligence officials.

According to his biography, Mr. Coll was born in Havana, Cuba on June 15, 1955 and arrived in the United States in 1969. In 1990, President George H.W. Bush appointed Coll to serve as deputy assistant secretary of defense for special operations and low-intensity conflicts.

One Herald Plaza, Miami, FL 33132-1693
(305) 350-2111

I am requesting media fee waiver, fast track and expedited treatment because this subject is a matter of exigency to the public and newsworthiness. This statement of compelling need is true and correct to the best of my knowledge and belief.

Please telephone me at (305) 205-6263 if I can clarify or expedite this request in any way.

The Act requires the fullest possible access to public records. Denial of any part of this request should be accompanied by a written statement of exactly what is being denied and the specific reason, subject to judicial review.

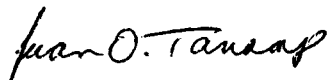
The law also requires that if part of a record is exempt from disclosure, you must redact and release all segregable parts.

You can mail the requested copies of records to:

Juan o. Tamayo
Miami Herald
1 Herald Plaza
Miami, FL 33132

Thank you for your assistance.

Very truly yours,

A handwritten signature in black ink that reads "Juan O. Tamayo". The signature is written in a cursive, flowing style.

Juan O. Tamayo
jtamayo@herald.com

Exhibit "F"



DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION AND SECURITY REVIEW
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

AUG 02 2005

Ref: 05-F-01991

Mr. Juan O. Tamayo
The Miami Herald
One Herald Plaza
Miami, FL 33132-1693

Dear Mr. Tamayo:

This is in response to the Freedom of Information (FOIA) request you submitted on July 11, 2005. We received your request on July 14, 2005.

This Office is responsible for responding to requests for the Office of the Secretary of Defense and the Joint Staff. The components of the Department of Defense (DoD), including the military departments and separate defense agencies, operate their own FOIA offices. The procedures for submitting requests are provided in DoD Regulation 5400.7-R and are available on the Internet at:
<http://www.defenselink.mil/pubs/foi>.

The information you requested is under the cognizance of the Department of the Navy. We have referred your request to them at the address provided below requesting they respond directly to you. There are no assessable fees for this response.

Department of the Navy
Office of the Chief of Naval Operations
N09B10
2000 Navy Pentagon
Washington, DC 20350-2000

Sincerely,


Dave Henshall
FOIA Specialist



Exhibit "G"



DEPARTMENT OF THE NAVY
HEADQUARTERS
NAVAL CRIMINAL INVESTIGATIVE SERVICE
716 SICARD STREET SE SUITE 2000
WASHINGTON NAVY YARD DC 20388-5380

5720 F05-0980
SEROOLJF/6U0596

JUN 16 2006

Mr. Juan O. Tamayo
The Miami Herald
One Herald Plaza
Miami, FL 33132-1693

Dear Mr. Tamayo:

This further responds to your July 11, 2005 Freedom of Information Act request asking for information maintained by the Naval Criminal Investigative Service (NCIS) concerning Mr. Alberto Coll.

Before we can release any information pertaining to Mr. Coll, you must first submit a written authorization (privacy waiver) from him. Without a privacy waiver, the disclosure of law enforcement records or information about another person is considered an unwarranted invasion of personal privacy. Such records, if they exist, are exempt from disclosure per Exemptions (b)(6) and/or (b)(7)(C) of the Freedom of Information Act, Title 5, U.S.C. § 552.

You have the right to appeal this determination. Your appeal must be postmarked within 60 calendar days from the date of this letter. An appeal should be addressed to the Secretary of the Navy's designee: Office of the Judge Advocate General, (Code 14), 1322 Patterson Avenue, S.E., Suite 3000, Washington Navy Yard, D.C. 20374-5066. The envelope and letter should bear the annotation "FOIA Appeal."

If we do not hear from you within 60 calendar days from the date of this letter, we will assume you no longer require this information and will administratively close your request. Please reference the above file number, F05-0980, in any future correspondence.

Sincerely,

A handwritten signature in black ink, appearing to be "JL Jones", is written over a horizontal line.

JASON L. JONES
LT., JAGC, USNR

Exhibit "H"

The Miami Herald

A Knight-Ridder Newspaper

One Herald Plaza, Miami, Florida 33132-1693 (305) 350-2111

FREEDOM OF INFORMATION ACT/PRIVACY ACT APPEAL

Department of the Navy
Naval Criminal Investigative Service
716 Sicard St. SE Suite 2000
Washington Navy Yard DC 20388-5380

Dear Sirs:

This is to appeal the rejection of my request, No. 5720 FO5-0980, notified to me via letter dated June 16 2006.

I believe that in this case the public interest in government actions far outweigh the privacy concerns involved. Further, significant public benefit would result from the disclosure of the requested records.

First, Mr. Alberto Coll now has no practical privacy left as a result of his previous government and academic and other jobs, and his conviction in a criminal case.

He served several years as Deputy Secretary of Defense, and later became one of the top professors at the U.S. Naval War College. For years he has remained a well-known public commentator on Cuba issues, and a Google search of his name produced 153,000 hits.

Also totally public was his guilty plea in June 2005 on charges of lying to the government about a trip to Cuba, his conviction and his sentence. His case has been the subject of at least 12 news stories and columns in the past year alone, from the Providence Journal to the Associated Press and the Miami Herald.

And there is an overriding public interest in obtaining the full details of the criminal case against Mr. Coll because they go to the heart of the activities of senior U.S. government and Navy officials in this case.

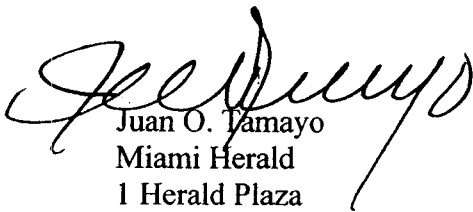
We believe that this document shows that Mr. Coll confessed to having carried out a long series of highly improper activities regarding Cuba not mentioned in the public record of his case so far -- including his meetings with Cuban officials he reasonably should have suspected of having ties to the Cuban intelligence services. As a holder of a security clearance, he should have reported those contacts to the appropriate authorities.

We believe that despite the seriousness of these issues – Cuba remains on the U.S. State Department list of nations that support or abet international terrorism -- officials of the U.S. Navy and the U.S. Naval War College worked strongly to keep the full details of Mr. Coll's activities out of the public eye because a detailed accounting would show some of those very same Navy officials to have been derelict in dealing with Mr. Coll's infractions. They reacted with embarrassingly little alarm when first informed that Mr. Coll was carrying out activities that could compromise his security clearance. We believe that at least one senior official at the Navy War College has been transferred out of his job as a result of his failure to take the Coll case more seriously.

Further, significant public benefit would result from the disclosure of the requested records because the public always benefits from the full truth of any event, especially when it involves the actions of government officials or its employees.

The privacy rights of a senior government official who has been convicted of a felony – and is alleged to have had contacts with possible intelligence officials from a Communist-ruled nation long hostile to U.S. interests – cannot and do not outweigh the public's right to know.

Accordingly, I request that you approve my request.



Juan O. Tamayo
Miami Herald
1 Herald Plaza
Miami Fla. 33132
July 11 2006
Office 305 376 3579
Cell 305 205 6263

Exhibit "I"



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON NAVY YARD
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON DC 20374-5066

IN REPLY REFER TO
5720
FO6140
Ser BCL/R 388
22 SEP 06

Mr. Juan O. Tamayo
Miami Herald
1 Herald Plaza
Miami, FL 33132

Dear Mr. Tamayo:

SUBJECT: YOUR FREEDOM OF INFORMATION ACT (FOIA) APPEAL

This responds to your letter of July 11, 2006. You challenge the Naval Criminal Investigative Service's (NCIS's) denial of your FOIA request for information maintained by NCIS concerning Mr. Alberto Coll.

Your appeal is a request for a final determination under the FOIA. I deny your appeal for the following reasons.

FOIA exemption (b)(6) allows the Government to withhold information about individuals when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Further, FOIA exemption (b)(7)(C) provides for protection of personal information in law enforcement records when release could reasonably be expected to constitute an unwarranted invasion of personal privacy. This requires a balancing of personal privacy interests against the public interest served by disclosure - whether the release of the information will shed light on the agency's performance of its statutory duties. In this case, the privacy interests of Mr. Coll as well as those of third parties outweigh the public interest in disclosure. I have determined that releasing the identifying information that you seek would constitute a clearly unwarranted invasion of privacy.

As the Secretary of the Navy's designee, I am responsible for this final denial of your appeal. You may seek judicial review of this decision.

A handwritten signature in black ink, appearing to read "P. J. Gibbons", is located below the main body of the letter.

P. J. GIBBONS
Lieutenant Commander, JAGC, U. S. Navy
Deputy Assistant Judge Advocate General
(General Litigation)
Acting

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

NOTICE: Attorneys MUST indicate All Re-filed Cases Below

I. (a) PLAINTIFFS

JUAN TAMAYO and MIAMI HERALD MEDIA CO., publisher of
The Miami Herald

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Sanford L. Bohrer, (FBN 160643), Scott D. Ponce, (FBN 0169528),
Robert T. Watson (FBN 679429), Holland & Knight LLP,
701 Brickell Avenue, Suite 3000, Miami, FL 33131 (305) 374-8500

DEFENDANTS

UNITED STATES DEPARTMENT OF JUSTICE and UNITED
STATES DEPARTMENT OF THE NAVY

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT
LAND INVOLVED.

Attorneys (If Known)

CIV - ALTONAGA
MAGISTRATE JUDGE
TURNOFF

(d) Check County Where Action Arose: ☒ MIAMI- DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE
HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Admiralty <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Antitrust, Monopoly and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat. TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Commerce Challenge 12 USC 311q <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed- (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

a) Re-filed Case ☐ YES ☐ NO b) Related Cases ☐ YES ☐ NO

(See instructions second page):

JUDGE

DOCKET
NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

5 U.S.C. Section 552 FOIA Request

LENGTH OF TRIAL via 2 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

Sanford L. Bohrer

5/18/07

FOR OFFICE USE ONLY
AMOUNT \$350.00

RECEIPT # 959938

05/18/07